

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

NEW ENGLAND BIOLABS, INC.,

*Plaintiff and Counterclaim Defendant,*

v.

RALPH T. MILLER,

*Defendant and Counterclaim Plaintiff*

RALPH T. MILLER

*Third Party Plaintiff,*

v.

COMMITTEE OF NEW ENGLAND  
BIOLABS, INC. EMPLOYEES' STOCK  
OWNERSHIP PLAN, PERSONAL  
REPRESENTATIVE OF DONALD COMB,  
JAMES V. ELLARD, RICHARD IRELAND,  
and BRIAN TINGER,

*Third Party Defendants*

and

NEW ENGLAND BIOLABS, INC.  
EMPLOYEE STOCK OWNERSHIP PLAN &  
TRUST

*Nominal Defendant*

Case No. 1:20-cv-11234-RGS

**UNOPPOSED MOTION OF  
DEFENDANT & CLASS COUNSEL TO  
APPROVE AGREEMENT REGARDING  
ATTORNEYS' FEES AND COSTS & AS  
TO DISTRIBUTION OF CLASS  
SETTLEMENT FUND AFTER LIMITED  
REMAND BY THE FIRST CIRCUIT ON  
SEPTEMBER 29, 2023  
WITH RULE 7.1 CERTIFICATION**

Defendant and Counterclaim Plaintiff Ralph T. Miller (“Miller”) and Class Counsel respectfully request that the Court approve an agreement regarding attorneys’ fees and expenses that resolves the dispute that Miller and Class Counsel had appealed to the First Circuit Court of Appeals. This motion follows a limited remand by the First Circuit by order dated September 29, 2023 after the Court entered Doc. No. 227 in which the Court granted Miller’s Unopposed Motion for Indicative Ruling and stated the Court will allow the motion on remand.

This Agreement, if approved, would also resolve a dispute between Class Counsel and NEB regarding the timing and manner of distributions to the Class from the Class Settlement Fund.<sup>1</sup>

For the reasons set forth in Defendant and Counterclaim Plaintiff’s Prior Motion, this Agreement should be approved. *See* ECF No. 222. This motion is unopposed by New England Biolabs, Inc. (“NEB”), in its own capacity and as the plan administrator of Nominal Defendant New England Biolabs, Inc. Employee Stock Ownership Plan & Trust (the “Nominal Defendant”), third party defendants Committee of New England Biolabs, Inc. Employees’ Stock Ownership Plan, Personal Representative of Donald Comb, James V. Ellard, Richard Ireland, and Brian Tinger (the “Third Party Defendants”).

For the foregoing reasons, the Agreement should be approved without other conditions or actions that must be taken by the litigants, other than implementing the terms of the Agreement.

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<sup>1</sup> In its Final Approval Order and Judgment, the Court retained exclusive jurisdiction as to all matters relating to (a) implementation of the Class Settlement Agreement; (b) disposition of the Settlement Fund and distributions from the Settlement Fund; (c) enforcement and administration of the Class Settlement Agreement. As such, this Court should have had jurisdiction to approve the portion of the agreement.

Dated: October 1, 2023

RALPH T. MILLER & THE CLASS,

By his attorneys,

/s/ R. Joseph Barton

R. Joseph Barton (admitted pro hac vice)

Colin M. Downes (admitted pro hac vice)

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/s/ Jonathan M. Feigenbaum

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**RULE 7.1 CERTIFICATION**

Following local rule 7.1, counsel for all parties conferred prior to filing this motion. Counsel for the NEB parties advises that they will not oppose this motion.

*/s/ Jonathan M. Feigenbaum*

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Jonathan M. Feigenbaum

**CERTIFICATE OF SERVICE**

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing this day, October 1, 2023.

*/s/ Jonathan M. Feigenbaum*

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Jonathan M. Feigenbaum